

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

PATRICIA LYNN JOHNSON,

Defendant.

CASE NO. 8:08CR53

TENTATIVE FINDINGS

The Court has received the Revised Modified Presentence Investigation Report (“PSR”) and the Defendant’s objections thereto (Filing No. 91). The government did not file formal objections, however according to the Addendum the government initially objected to the probation officer. See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The plea agreement reached under Federal Rule of Criminal Procedure 11(c)(1)(C) is for a sentence of 5 years probation. The plea agreement does not address guideline issues. The PSR applies a 4-level upward enhancement for an aggravating role in the offense, and this adjustment precludes a sentence under the plea agreement if the advisory guidelines are strictly applied. The parties' arguments have been considered, and the Defendant's objections are granted. The total offense level is 7.

IT IS ORDERED:

1. The Defendant's Objections to the Presentence Investigation Report (Filing No. 91) are granted;
2. Otherwise the Court's tentative findings are that the Presentence Investigation Report is correct in all respects;

3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final; and

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 28th day of January, 2009.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge